

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>TINENE BEAVER</b>	)	
Claimant	)	
	)	
VS.	)	
	)	
<b>SPANGLES</b>	)	
Respondent	)	Docket No. <b>1,067,204</b>
	)	
AND	)	
	)	
<b>KANSAS RESTAURANT &amp; HOSPITALITY</b>	)	
<b>ASSOCIATION SELF-INSURANCE FUND</b>	)	
Insurance Carrier	)	

**ORDER**

Claimant requests review of the November 21, 2013, preliminary hearing Order entered by Administrative Law Judge (ALJ) Rebecca Sanders. Frank Taff, of Topeka, Kansas, appeared for claimant. Vincent Burnett, of Wichita, Kansas, appeared for respondent.

The record on appeal is the same as that considered by the ALJ and consists of the preliminary hearing transcript, with exhibits, dated November 19, 2013, and all pleadings contained in the administrative file.

In denying claimant's request for temporary total disability benefits, the ALJ found:

Claimant may have had a good reason why she was absent from work on October 9, 2013. However, that does not excuse Claimant from notifying her employer she was going to be absent. Further, Claimant failed to disclose a previous worker's compensation settlement when asked by her employer in writing if she had received worker's compensation benefits and she said no. Claimant was in salaried management position and that position required her to follow reasonable work rules and to be truthful. It is found and concluded that Claimant was terminated for cause and her request for temporary total benefits is denied.

**ISSUES**

Claimant claims the ALJ erred in finding that claimant failed to prove she was temporarily and totally disabled from September 26, 2013, through November 17, 2013.

Respondent contends claimant's application for review should be dismissed for lack of jurisdiction, pursuant to K.S.A. 44-534a(a)(2) and K.S.A. 44-551(i)(2)(A). In the alternative, respondent maintains the ALJ's Order should be affirmed.

The issues for Board review are:

1. Does the Board have jurisdiction to review the ALJ's preliminary hearing Order?
2. Is claimant entitled to temporary total disability (TTD) compensation?

### **PRINCIPLES OF LAW & ANALYSIS**

The Board's review of preliminary hearing orders is limited. Not every alleged error in law or fact is subject to review. The Board can review only those issues listed in K.S.A. 44-534a(a)(2). Those issues are: (1) whether the employee suffered an accident, repetitive trauma or resulting injury, (2) whether the injury arose out of and in the course of the employee's employment, (3) whether notice is given, or (4) whether certain defenses apply. The term "certain defenses" refers to defenses which dispute the compensability of the claim under the Workers Compensation Act.<sup>1</sup> The Board can also review preliminary decisions when a party alleges the ALJ exceeded his or her jurisdiction.<sup>2</sup>

The issues of whether a worker is entitled to TTD, and the amount of the weekly TTD benefit, are not generally considered jurisdictional. An issue regarding whether a worker is entitled to TTD is fully within the authority granted to ALJs.

Jurisdiction is defined as the power of a court to hear and decide a matter. The test of jurisdiction is not a correct decision but a right to enter upon inquiry and make a decision. Jurisdiction is not limited to the power to decide a case rightly, but includes the power to decide it wrongly.<sup>3</sup>

K.S.A. 2012 Supp. 44-510c(b)(2)(C) provides:

If the employee has been terminated for cause or voluntarily resigns following a compensable injury, the employer shall not be liable for temporary total disability benefits if the employer could have accommodated the temporary restrictions imposed by the authorized treating physician but for the employee's separation from employment.

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<sup>1</sup> *Carpenter v. National Filter Service*, 26 Kan. App. 2d 672, 994 P.2d 641 (1999).

<sup>2</sup> K.S.A. 2012 Supp. 44-551(i)(2)(A).

<sup>3</sup> *Allen v. Craig*, 1 Kan. App. 2d 301, 303-04, 564 P.2d 552, rev. denied 221 Kan. 757 (1977).

Since the review requested by claimant does not raise an issue of compensability enumerated in K.S.A. 44-534a(a)(2) and there has been no showing the ALJ exceeded her authority, the application for Board review must be dismissed for lack of jurisdiction.

**WHEREFORE**, the undersigned Board Member finds that claimant's request for Board review of the November 21, 2013, preliminary hearing Order entered by ALJ Rebecca Sanders is hereby dismissed for lack of jurisdiction.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of January, 2014.

\_\_\_\_\_  
HONORABLE GARY R. TERRILL  
BOARD MEMBER

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Honorable Rebecca Sanders, Administrative Law Judge